



COMMONWEALTH of VIRGINIA
STATE BOARD OF ELECTIONS

Charles E. Judd
Chairman

Donald L. Palmer
Secretary

Kimberly T. Bowers
Vice-Chair

TO: E. Randall (Randy) Wertz, Montgomery County General Registrar
Dean Dowdy, Secretary, Electoral Board
Helen Anna Young, Vice-Chair, Electoral Board
Cynthia Chappelka, former Secretary, Electoral Board
Carroll D. Williams, Chair, Electoral Board

Montgomery County Office of Voter Registration
Montgomery County Government Center
755 Roanoke Street, Suite 1
Christiansburg, VA 24073-3175

FROM: The Virginia State Board of Elections

RE: Letter of Censure

DATE: May 25, 2011

On April 29, 2011, upon recommendation by the Office of the Attorney General of the Commonwealth of Virginia, the State Board of Elections (SBE) unanimously voted to issue a Letter of Censure to you, the Montgomery County Electoral Board and the Montgomery County General Registrar, for violations of Virginia law that took place on Election Day, November 2, 2010.¹ This action was taken in accordance with § 24.2-103 of the Code of Virginia that requires the State Board to "supervise and coordinate the work of the county and city electoral boards and of the registrars to obtain uniformity in their practices and proceedings and legality and purity in all elections." This letter serves as the censure and contains recommendations and information to help prevent another serious problem from arising. This letter also addresses potential future State Board actions should problems persist with Montgomery County's election administration.

The State Board would like to clarify that Carroll Williams, the new Montgomery County Electoral Board Chair, was not on the Electoral Board at the time of the 2010 General Election and consequently cannot be held responsible for the issues described in this letter. This reprimand is directed solely at the Electoral Board members and General Registrar that administered the 2010 General Election. However, we encourage Ms. Williams to consider this letter and to work with her fellow Board Members to follow the State Board's recommendations and guidance.

On April 29, 2011, the State Board unanimously agreed with the conclusions made by the Office of the Attorney General as memorialized in the statement appended to this letter (“Statement of Senior Assistant Attorney General Joshua Lief Regarding the Attorney General’s Office Investigation Into the November 2, 2010 Election in Montgomery County”). The State Board concurred that “it is clear that a violation of election law occurred in the county on November 2, 2010.” As memorialized in Mr. Lief’s written findings, these mistakes include:

- The failure to use provisional ballots when a general registrar is unable to verify that someone is registered and eligible to vote in a particular precinct.
- Unlawfully permitting approximately 750 unverified voters to use electronic voting machines to vote, thereby making it impossible to later void any ballots cast by voters not eligible to vote in those particular polling places.
- The failure to verify that these approximately 750 voters were registered and qualified to vote in those precincts resulted in 13 voters casting ballots in precincts in which they were not legally qualified to vote.

While these are serious mistakes, the State Board would like to note that we agree with the Office of the Attorney General’s findings that the mistakes were not made in an “attempt to corrupt the election, alter the results or allow non-registered voters to vote.” The State Board does not believe foul play was at issue in the decision-making that day.

Pursuant to the decision at the April 29, 2011 Board Meeting, the State Board of Elections hereby censures Montgomery County General Registrar Randy Wertz, current Montgomery County Electoral Board members Dean Dowdy and Helen Young, and then-Montgomery County Electoral Board Secretary Cynthia Chappelka for failing to discharge their duties and for violations of Virginia law when administering the General Election on November 2, 2010.

Recognizing that a prospective and solutions-based approach is most helpful in ensuring that these mistakes are not made in future elections, the State Board requests several other steps be taken.

First, the current Montgomery County Electoral Board Members should increase the training opportunities and requirements for its officers of election, specifically as it relates to setting up and operating electronic pollbooks (EPBs) and establishing contingency plans in the event of a disruption of EBP operability. Montgomery County’s General Registrar and Electoral Board members also should receive additional training in setting up and operating EPBs. The State Board will provide necessary one-on-one and in-person training from SBE’s Voting Technology Coordinator. This training will utilize technologies including webinars, online instruction, and any additional training the Secretary of the State Board deems necessary after consultation with Montgomery County.

In addition, similar training should also be performed in relation to the legal requirements and best practices for the appropriate use and adequate supply of provisional ballots at a polling place. When conducting this training, we encourage Montgomery County election officials to pay particular attention to 2011 VA. Acts Ch. 810, § 1, legislation recently signed by the Governor amending § 24.2-611 of the Code of Virginia:

E. In the event that the electronic pollbooks for a precinct fail to operate properly and no alternative voter list or pollbook is available, the officers of election, in accordance with the instructions and materials approved by the State Board, shall (i) maintain a written list of the persons voting and (ii) provide to each person voting a provisional ballot to be cast as provided in § 24.2-653.

With this change, the law will now be especially explicit in this area. Consequently, Montgomery County election officials will need to stock enough provisional ballots so a lack of supply is not an issue if a similar incident occurs in the future. We also strongly recommend Montgomery County maintains backup paper poll books on a contingency basis.

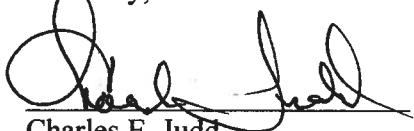
The State Board of Elections has a vested interest in ensuring elections in Montgomery County are administered properly and lawfully. Consequently, agency leadership will schedule at least one site visit to the Montgomery County General Registrar's office to gain an understanding of how the office is run, discuss officer of election training plans, meet with the Electoral Board members, and provide advice and assistance as needed. This visit will take place before the August 23, 2011 Primary Election.

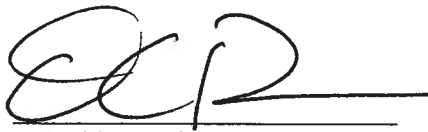
The State Board of Elections will also plan to have between one and two observers in Montgomery County during the November 8, 2011 Primary and General Elections. This observer(s) will be available to assist the General Registrar and Electoral Board members if needed, or if no assistance is needed, simply to observe the administration of the election.

Based on recommendation by the Office of the Attorney General, the State Board hereby puts the Electoral Board members and General Registrar of Montgomery County on notice that future violations of the law may result in the State Board seeking their removal pursuant to §§ 24.2-103 and 24.2-233 of the Code of Virginia.

The State Board and agency staff will do everything within their statutory authority and resources to assist Montgomery County in the incident-free administration of its elections. We look forward to working with each of you as we move forward toward important elections in 2011 and 2012.

Sincerely,


Charles E. Judd
Chair


Donald L. Palmer
Secretary


Kimberly Bowers
Vice-Chair

¹ The SBE Board Meeting Minutes memorializing this decision are available at Virginia's Town Hall: <http://townhall.virginia.gov/L/ViewBoard.cfm?BoardID=151>. An audio file of the meeting is also available at SBE's website: http://www.sbe.virginia.gov/cms/Media/Public_Notices/Index.html.